

October 16, 2026

Member Regulation Policy
Canadian Investment Regulatory Organization
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Copies to the Canadian Securities Administrators (CSA): Market Oversight, Alberta Securities Commission (CIRO-Reporting@asc.ca); Trading and Markets, Ontario Securities Commission (TradingandMarkets@osc.ca)

Re: Rule amendments relating to the proposed adoption of an Incorporated Approved Person compensation option

Kenmar Associates is an Ontario-based, privately funded investor education organization. We publish canadianfundwatch.com and the monthly Fund OBSERVER, and through Kenmar Portfolio Analytics we help harmed investors and their counsel file complaints at no charge.

Our comments derive from the retail investor's perspective.

We have assessed the proposal via a 360 degree review to help identify regulatory, investor protection or implementation gaps. We have expended significant resources to provide CIRO an informed commentary from the retail investor's perspective. The devil is in the details which we explore.

Our position

The proposal goes far beyond advisor *compensation harmonization* across Canada - it is transformational change that impacts numerous aspects of the client-advisor relationship. The original mission statement was intended to reconcile the old IIROC (no incorporation) and MFDA (directed commission) compensation regimes after the merger, rather than a comprehensive or clean business succession plan for retiring advisors.

The 2024 consultation was about how compensation is delivered. This version lets the advisor's corporation, the Incorporated Approved Person (IAP), sell insurance products such as segregated funds, plus provide "ancillary" services. That is a substantial change from the 2024 proposal and it needs a different level of scrutiny.

This proposal is a tax reduction initiative for advisors presented as compensation harmonization. It lowers the marginal tax rate for high-earning advisors. It puts a corporate layer between the client and the dealer that is accountable to them.

The concrete benefits-such as tax certainty, financial flexibility, and professional-style compensation structures go directly to the advisors and CIRO dealers. For retail investors, CIRO rates the direct impact on retail clients as **neutral** in both the

near and long term. client cost reductions or underserved market access are not part of the equation.

CIRO considers the longer-term investment dealer impact as positive because P&L risk leaves the dealer's books to IAP's. But complex agreements between advisor, dealer and corporation raise compliance costs. An advisor who now carries that risk has reasons to favour higher-margin products, cut service or drop smaller clients.

Supervising an incorporated entity is legally and structurally more complex than overseeing an individual agent or employee. Implementing this model is not cheap or simple for the industry. Sponsoring dealers will be forced to shoulder the oversight of thousands of newly formed advisor corporations. Compliance teams will need to effect targeted reviews of communication records, client files, and transactions to detect unapproved activities or recommending non-approved products. These complex oversight frameworks impose heavy compliance demands with very little operational benefit to the dealer. There is also a distinct risk that these elevated administrative costs will ultimately trickle down to consumers in the form of higher fee structures.

The final rules should mandate full look-through access to notes, books and records. Dealers will have to verify the corporation's legal standing, and monitor the advisor's corporate tax compliance to avoid secondary liability.

The near-term impact on CIRO is classified as negative because staff will be approving corporations qualifying under the incorporated advisor option as "Incorporated Approved Persons" instead of focusing on modernizing complaint handling, improving the advisor CE program and addressing other long deferred investor protection issues.

We question whether corporate multi-tier ownership (such as allowing non-voting family shares) aligns advisor focus strictly with client best interests duties rather than estate or tax-planning priorities for the advisor's family.

We urge CIRO to effect a checklist impact analysis on related client touch-points such as account agreements, account statements, Continuing Education, Total Cost Reporting (TCR), account performance reporting, client disclosure obligations, complaint handling/resolution, Trusted Contact Person (TCP) nomination, account transfers and client service.

The record CIRO has to answer

The MFDA directed-commission option was never harmonized. Alberta excluded it from the start. IIROC never permitted it. An earlier IDA rule in this area went to the CSA in 2006 and was refused because investor protection would be compromised. CIRO should state what those concerns were, how this proposal answers them, and why Alberta still says no.

CIRO cites “tax uncertainty” in the directed-commission model. After many years of apparently successful use, it should disclose exactly what that uncertainty is and why it surfaced now.

CIRO should publish the compliance record and complaint history of existing directed-commission advisors, and their experience with the Canada Revenue Agency (CRA). It should also state how many such advisors there are.

The numbers that matter

Approved persons regulated by CIRO	about 110,000 (252 dealers)
Ontario top personal rate on services income vs small business corporate rate	53.53% vs 12.2%
Brokerage advisors earning \$1 million or more in 2024 (Investment Executive Advisor Report Card 2025)	34.8%
Enforcement actions against dealers in fiscal 2026	9
Bank-dealer reps who say clients are at least “sometimes” sold products not in their interest (OSC/CIRO, July 2025)	25%
Bank-dealer Reps who say scorecards influence their recommendations	40%
Reps unable to define a management expense ratio	23%
Clients of CIRO Members affected by the recent data breach	750,000

The tax benefit is smaller than it looks. An employee advisor who incorporates gives up base salary, health and death benefits, vacation and sick pay, tuition support and a pension plan. In exchange, the corporation takes on legal and accounting costs, liability premiums and, as we understand it, both CPP portions once net self-employment income passes \$3,500, with GST/HST registration needed above the revenue threshold. CIRO’s “compensation harmonization” analysis compares fees and commissions while ignoring salary and benefits is not harmonization.

At least one other figure bears on the decision. CIRO collected just 18% of the fines it imposed on individuals in fiscal 2026. Conduct involving inappropriate personal financial dealings, outside activities, and standards of conduct were among the top three violations in concluded proceedings against registered individuals .These are precisely the types of rule violations that can reasonably be expected to increase under the increased complexity structure.

CIRO may need increased enforcement resources to cope with increased volumes. A corporate layer won't make fine collection easier, and the CSA should weigh what that does to deterrence before it approves the proposal. Its staff have better uses than overseeing corporations.

Dealers are not legally required to offer the incorporated advisor option.

The claimed benefits

The competitive-disadvantage argument is asserted, not demonstrated. Banks already retain top producers with grid design, bonuses, stock options, club memberships and career paths. They could also permit selected high earners to incorporate while keeping the clients. CIRO should say whether directed-commission reps have taken material business from employee advisors and whether directed commission advisor numbers have grown or shrunk. It should also report what other jurisdictions running a similar model have found.

CIRO links advisor incorporation to greater access to advice, but this relies on an unproven chain of assumptions—that the rule attracts or retains more advisors, that those advisors serve more clients, and that those clients specifically include underserved investors. Nothing in the rules mandates that outcome. Corporate tax savings largely benefit the advisor, with no mandatory requirement that these efficiencies are passed on to clients.

The “increased access to advice” argument was once used to defend deferred sales charge (DSC) mutual funds. It took regulators years and investors millions of dollars to unwind that one. Access to advice is not the same as receiving it. A 2019 OSC Investor Advisory Panel survey found nearly a third of advised investors could not say their advisor had ever discussed planning for retirement, education or a home, and more than half reported little or no contact in the past year.

What the corporate layer does to clients

Investor confusion: We expect a rise in complaints and misrepresentation claims from confusion over who the client is dealing with: the dealer, the approved person or the corporation. Disclosure alone won't fix that. Dealer accountability and close supervision will.

Legal liability: While CIRO maintains that dealer members remain legally liable for the acts of the advisor's corporation, interposing personal or family-owned corporate structures (including non-voting family shareholders) adds layers of corporate complexity that can obscure financial arrangements and heighten reputation or governance risks.

Elevated regulatory arbitrage: If insurance, mortgage brokerage and real estate can be sold through the corporation, one person will be recommending products with different commission rates and different regulators. The conduct standards and the redress routes differ too. An investment portfolio that contains segregated funds is

already outside the reach of the Ombudsman for Banking Services and Investments (OBSI); the Ombudsman for Life and Health Insurance (OLHI) takes that piece. The corporate layer adds more of these gaps.

Enforcement: When CIRO review reveals widespread failures in implementing core investor protection standards like Know-Your-Client (KYC), Know-Your-Product (KYP), and suitability, CIRO routinely responds with more guidance, soft reminders, and recommendations rather than hard enforcement. With the increased complexity of the proposed layering, there is a risk such enforcement practices may not be up to the challenges.

Fee-based conversion: Incorporated advisors with fixed overhead can reasonably be expected to accelerate the shift of accounts to fee-based. Supervision will have to better detect double-billing on funds that carry embedded trailing commissions and validate account type suitability for clients. Seniors and retirees drawing down their savings are the clients most vulnerable to *account type* misdirection.

Preconditions. Nothing should launch until:

The CRA, Revenu Québec and the other provinces have issued advance rulings or CIRO is reasonably confident of success. A subsequent CRA challenge would leave advisors carrying a corporation's costs with none of the tax benefit, and the attrition that follows lands on retail clients.

Independent plaintiff-side counsel has opined on whether the structure impairs vicarious liability, and tax experts on whether the framework will hold under the CRA's personal services business rules and cases such as *Boutilier v. The Queen*, 2007 TCC 96. This would provide considerable comfort to investors and advisors that critical issues have been thoroughly assessed.

Dealers comply with the Client Focused Reforms (CFR) to CIRO's satisfaction. OSC/CIRO reviews found widespread failures in conflicts management and know-your-client (KYC) work. A three-party supervisory structure can't be built on a supervisory system that hasn't passed its last inspection.

Bank branch supervisory deficiencies are definitively resolved to the satisfaction of CIRO. In a July, 2025 report <https://www.osc.ca/en/news-events/news/osc-and-ciro-report-highlights-sales-culture-concerns-canadas-largest-bank-affiliated-dealers>, the OSC and CIRO revealed that 25% of representatives across Canada's largest banks stated that clients have been recommended products or services that are not in their interests at least "sometimes"; 40% believe scorecards (a means of tracking performance against target measures, including sales targets and/or activity-based targets) skew product and service recommendations to clients.

CIRO's complaint system is modernized so it is fit for purpose. See FAIR response to CIRO's Phase 5 rule consolidation <https://share.google/GBhfdYSCN5w1XAW0l> and our response to that consultation.

OBSI has a binding mandate with a \$550,000 cap. The corporate layer gives dealers a new way to say "not our business." Investors need a decision-maker who can say otherwise.

Advisor chargebacks, a blatant conflict-of-interest, that harms retail investors are banned effective immediately as a inherent breach of CFR rules (the CSA has set implementation time at 24 months). Professional IAP's should not be exposed to this advice- skewing temptation.

Terms. If the proposal proceeds, the rules should say in plain words:

The client is the dealer's client and the account agreement is with the dealer. The dealer is jointly and severally liable for everything the IAP and corporation do. Off-book sales by a licensee is presumptively the dealer's liability toward the investor.

One CIRO-approved tripartite agreement and one model client disclosure, investor-tested and published for comment before the final rule is approved. The disclosure should align with the CFRs' requirement to disclose material conflicts-of-interests in a manner a reasonable client can understand.

The IAP and corporation carry professional liability insurance as appropriate and answer for their staff.

Neither the corporation nor the IAP may investigate or settle a complaint, or place a client under an NDA. Every complaint must progress through the dealer's declared complaint system and is OBSI-eligible, including approved non-registerable activity.

If the compensation comparison is based on the medical profession (doctors), the IAP must be a fiduciary. A doctor's corporation changes the tax bill, not the standard of care. Taking the tax benefit without the duty isn't harmonization.

"Compensation" and "ancillary services" are better defined. Compensation includes total compensation, salary and benefits , or the harmonization comparison is meaningless.

Anything the dealer permits as *ancillary service* is on- book.

Disclosure at account opening and at point of sale, naming the dealer as the accountable party.

No corporate titles such as CEO in client dealings. No names or branding that could pass for an independent firm. Corporate marketing, websites and investor seminars pre-approved by the dealer. CFR prohibits titles that give a false impression of seniority, expertise or trust.

All records on the dealer's systems and none at a residence. CIRO has a right of entry to corporate premises. Client data is held for the dealer's clients and used for nothing else.

Robust, modern remote supervision standards written before launch, not after the first failure and remote offices are secure against data breaches. The proposed regime demands intensive, proactive supervision and clear bright-line backstops.

Clear, unambiguous, actionable CIRO guidance to promote consistent application across the industry, reduce implementation risk and limit client harm. Without knowing how high-level principles will be interpreted in daily operations, dealers could go offside with regulatory intent to the detriment of investors. The tension between principle-based flexibility and strict accountability is highlighted by CIRO's treatment of critical issues such as account transfer time, with flexible recommendations rather than strict, non-negotiable operational baselines.

Dealers will need enhanced policies, processes and practices in place to detect and prevent unauthorized off- book sales transactions.

A backup advisor will be supplied by the dealer when the IAP is ill, de-registered, insolvent or the corporation is wound up.

OBSI is permitted to investigate a portfolio complaint that includes segregated funds, and refined CIRO guidance on account-type selection issued before launch.

Fund Facts and National Instrument 81-105 on mutual fund sales practices are updated as needed to reflect the structure.

A published outcomes review after two years covering complaints, CRA disputes, enforcement, fees, and a determination whether smaller accounts gained access to trustworthy advice.

Questions the consultation leaves open

Will CIRO proceed with implementation if the banks and major investment dealers don't opt in? Without them, thousands of advisors could not incorporate and harmonization covers a fraction of the industry.

Will implementation wait until every province agrees, or will dealers be splitting commission flows by province?

Does the CSA intend to extend this to exempt market dealers and other registrant categories?

Who pays a CIRO fine, the individual or the corporation? Section 67.6 of the Income Tax Act appears to make it non-deductible either way.

Will dealers be responsible for ongoing training of non-employee advisors with respect to policies and procedures, new products, fraud detection, regulatory updates, data security, and ethical codes?

What impact does the CRA's administrative position that mutual fund trailing commissions attract GST/HST from January 1, 2028 have on the proposal? Key issues might include determining how to characterize various fees, identifying which party earns what, and managing remittances and input tax credit claims among multiple parties-especially when payments are diverted to private corporations.

Conditions not optimal

CIRO is just three years old and has a new and untested rulebook. CIRO's rule-consolidation initiatives faced criticism for prioritizing administrative alignment between mutual fund dealers and investment dealers over actively elevating core investor protection standards.

OBSI investment complaint volumes are near record levels.

On September 10, 2026 CIRO issued guidance on risk profiling because compliance reviews found significant dealer failures on the basics of KYC client risk assessment.

A 2024 CIRO/OSC survey revealed serious issues with bank branch sales practices and the adverse impact on retail investors. To this date, no affirmative corrective action has been taken- improvement remains a work in progress.

CIRO is still recovering from a major data breach and faces litigation.

Directed commissions apparently worked well under the MFDA's rules-based regime but will regulation of the proposed advisor incorporation be robust under CIRO's principles - based regulatory approach? See *Principles-based regulation is failing investors* - Investment Executive <https://share.google/fWMYD3bwuDWAORd5O>

Conclusion

The CSA asked CIRO to harmonize advisor compensation. That is a task with no investor at the end of it: an agent's pay package can't be harmonized with an employee's. The dealer, not the advisor, sets the fees charged to clients and the product shelf available for sale. CIRO is attempting to achieve two things at once, dealer control tight enough to protect investors and corporations independent enough to satisfy the CRA "(is in substance a self-employed worker arrangement)". CIRO should be prepared to rationalize how both can be effected at the same time to the satisfaction of the CSA and CRA.

In our view, the legislative framework governing professional corporations for other professions would be a sound benchmark for the incorporation of professionals in the investment sector.

The proposal could pull significant CIRO resources away from complaint handling and enforcement, and added dealer supervisory costs could ultimately flow to clients. In return, select advisors get a lower tax bill.

Implementation plans should ensure uninterrupted client service during the transition to incorporation. Forcing the transition away from legacy directed commissions within 12-18 months could disrupt existing practices and impair client service during the transition. How many persons are impacted- 30, 300, 3,000 or 30,000?

To successfully execute the IAP framework, significant statutory overhauls are required across multiple provincial jurisdictions. The Canadian Securities Administrators (CSA) and provincial/territorial governments must pass consequential amendments to existing securities laws-a process expected to drag out over several years. We are concerned that chasing this proposal would distract CIRO from addressing immediate regulatory deficiencies, such as modernizing complaint handling or resolving chronic account-transfer friction.

Like SIMA, the CIRO mandate involves maintaining rules that help **ensure** that the financial advice profession **remains vibrant** and that financial advice remains readily available to Canadian investors into the future. *Such an aggressive mandate can at times conflict with investor protection.* We strongly recommend that the CSA amend the CIRO Recognition Order to tone down this mandate. As worded, it could undermine even its core investor protection mandate.

For this complex scheme to be justified, it should be in the public interest. Given the material impact this proposed scheme will have on CIRO, dealers, advisors and investors, and income tax collected, we recommend a cost- benefit analysis be effected.

Kenmar Associates plans to continue to actively participate in the policy discussion and urges CIRO to place investor protection, market integrity, and the public interest at the centre of any future decisions regarding advisor incorporation.

Please feel free to contact us if there are any questions related to this Comment letter.

We sincerely hope our comments are useful to CIRO and the CSA in assessing the proposed framework.

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cc

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